IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.1166 of 1983
Date of Decision : 04.07.2007

Suresh Chander .....Appellant
versus
Behari Lal and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.S.C.Khunger, Advocate for the appellant.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby his suit for declaration that the land, residential house and the shop are the Joint Hindu Family property of the plaintiff, his father Bihari Lal and brother Vishwa Mittar, was dismissed.

Both the Courts below have recorded a concurrent finding of fact holding that the land was a Joint Hindu Family property and in respect of which partition has been effected in the year 1960 and each of the parties got 1/3rd share. Whereas, in respect of the residential house and the shop, it has been held that there is nothing on the record to the effect that the property has come to defendant No.1 from his father or from any other ancestral. A finding has also been returned that there is no evidence that the property was purchased by defendant No.1 with the aid of Joint Hindu Family funds. The House Tax Register, Exhibit PB and PC have been

found to be not related to the property in question. The sale deeds Exhibit PD and PE have not been connected with the shop and the house in dispute. The description given in the sale deeds is totally different from those given in the plaint. Thus, it was found that the residential house and the shop in question are not the Joint Hindu Family property.

Learned counsel for the appellant has vehemently argued that the findings recorded by the Courts below suffer from patent illegality and irregularity in respect of the residential house and the shop. He has then contended that in the sale deed Exhibit PE, it is mentioned that the house has been purchased by Khazan Chand, father of defendant No.1. It is the stand of defendant No.1 in his statement as DW-1 that House No.2455 was purchased by defendant No.1 from his own funds, though in the name of his father Khazan Chand. Thus, it is contended that the identity of the residential house cannot be said to be in dispute. Since defendant No.1 has not led any evidence in respect of the fact that he is the one who has provided funds for the purchase of the house, the findings recorded by the Courts below are not sustainable. It is also argued that there is no evidence of supply of funds by Bihari Lal and, therefore, the property is deemed to be ancestral property as it is inherited by Bihari Lal from his father. He has referred to statement of PW-4, Gulzari Lal, brother of defendant No.1, who deposed that the residential house was purchased by his father from his own funds.

However, after going through the evidence, I do not find that the inference sought by the appellant are available. DW-1 Bihari Lal while deposing in his statement has pointed out that there is no sale deed in

respect of residential House No.2455. He has deposed that the construction of the house was raised in stages from the funds provided by him. He has also denied the suggestion that the residential house was purchased vide two sale deeds by his father. However, it is admitted by him that the property was purchased by him at the instance of his father and the sale deed was executed in the name of his father. The said portion of the statement is sought to be related to the purchase of the residential house. However, the reading of the entire cross-examination does not lead to such inference as he has denied execution of the sale deed of residential House No.2455 in the name of his father, in earlier part of the statement. Even otherwise, inferences to return a categorical finding is not the reasonable interpretation of the rule of interpretation of evidence. Thus, it cannot be said that the residential house in dispute was a Joint Hindu Family property on the basis of sale deed Exhibit PE. The plaintiff has failed to connect the suit property with the house in dispute bearing municipal number 2455. The statement of Gulzari Lal is self serving and has remained uncontroverted.

Even if the argument of learned counsel for the appellant is accepted, still it cannot be said that the residential house in question is ancestral property. The Hon'ble Supreme Court of India in ***`Commissioner of Wealth Tax etc. versus Chander Sen etc., AIR 1986-S.C.-1753',*** has held that where the property is inherited from the father, the same is not the ancestral qua his sons in terms of Section 8 of the Hindu Succession Act, 1956. The relevant extract is as under:-

> "xx xx xx xx
> Furthermore, as noted by the Andhra Pradesh High Court, the Act makes it clear by S.4 that one should look

> to the Act in case of doubt and not to the pre-existing Hindu Law. It would be difficult to hold today the property which devolved on a Hindu under S.8 of the Hindu Succession Act would be HUF property in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in Class-I, the male heirs in whose hands it will be joint Hindu Family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in Class I of Schedule under S.8 of the Act included widow, mother, daughter of predeceased son etc.
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> xx xx xx xx"

In view of the above, I do not find that the residential house in dispute can be said to be a Joint Hindu Family property in respect of which the appellant can claim any declaration.

Thus, I do not find that the findings recorded by the Courts below suffer from any patent illegality or irregularity which may give rise to any substantial question of law in second appeal for consideration of this Court.

The appeal stands dismissed.

04-07-2007 (HEMANT GUPTA)
*mohinder JUDGE